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IN THE SUPREME COURT
OF THE STATE OF UTAH

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

RICHARD F. BASSETT,

Plaintiff and Respondent,

vs.

WALTER BAKER,

Defendant and Appellant.

Case No.

13799

BRIEF OF RESPONDENT

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Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
STATEMENT OF POINTS:	
POINT I	
A JOINT VENTURE EXISTED BETWEEN THE PARTIES	3
CASES AND AUTHORITIES CITED	
VERN SHUTTE & SONS vs. BROADBENT 24 Utah 2d, 415	4
CONNER vs. GREAT WESTERN SAVINGS & LOAN ASSOCIATION 447 P 2d 609	4
48 A.L.R. 1055-1056	3

IN THE SUPREME COURT OF THE STATE OF UTAH

RICHARD F. BASSETT,	}	Case No.
<i>Plaintiff and Respondent,</i>		
vs.		
WALTER BAKER,		
<i>Defendant and Appellant.</i>		

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This action was filed by the plaintiff to determine the business relationship between the plaintiff and the defendant and for an accounting.

DISPOSITION IN THE LOWER COURT

The Honorable J. Robert Bullock, bifurcated the case with the first trial to determine the relationship

between the parties, and the second trial to determine the damages or an accounting.

The case was tried to the court without a Jury on June 3rd, 1974. The court held that a joint venture existed between the parties and that a further accounting could be had on the basis of the joint venture.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the judgment on the merits rendered by the trial court affirmed.

STATEMENT OF FACTS

The plaintiff is inexperienced in raising cattle and was looking for someone to assist him in running a small ranch-type operation. The plaintiff made purchases at a farm store where defendant worked. They gradually began discussing the running of a cattle operation like the plaintiff wanted. The plaintiff was to raise the financing and the defendant would operate or run the cattle (Tr. 14, 15). There was no discussion regarding wages (Tr. 17). The defendant definitely stated that he was not working for wages (Tr. 65). It was the understanding of the parties and part of the arrangements between them that they would split any profit 50-50. There was apparently no discussion about what would happen if there were a loss (Tr. 16, 67).

According to the arrangements, the plaintiff financed the purchase of 26 head of cattle through Zion's

First National Bank and the defendant ran the cattle (Tr. 49, 50, 51).

The arrangements between the parties did not work out satisfactorily and was terminated by mutual agreement (Tr. 54).

When the defendant would not return the cattle and calves to the plaintiff, the plaintiff obtained a Writ of Replevin and obtained possession of the cattle and calves. Since that time, plaintiff has been seeking an accounting from the defendant so that any profit or loss between the parties could be determined.

P O I N T I

A JOINT VENTURE EXISTED BETWEEN THE PARTIES.

“The now widely recognized legal relation of joint venture is of modern origin; such relation was not recognized a common law, being regarded as within the principles governed by partnerships.”

“And although courts in modern times do not treat a joint venture as identical with a partnership, it is so similar in its nature and in the contractual relationship created by such a venture that the rights as between the joint adventures, are governed practically by the same rules that govern partnerships. As some of the courts hold, while a partnership is ordinarily formed for the transaction of general business of a particular

kind, a joint venture as a rule, relates to a single transaction, . . .” (48 A.L.R. 1055-1056).

In the recent Utah case of Vern Shutte & Sons vs. Broadbent, 24 Utah 2d, 415, the court summarized the Utah cases and cases from other jurisdictions in determining what is a joint venture. The various jurisdictions varied somewhat in their requirements, but for a joint venture to exist they all required one or more of the following: (1) Sharing in profit or loss; (2) right of joint control; (3) community of interest; (4) action and conduct showing cooperation.

A reading of the transcript shows that the plaintiff met all of these requirements and that the lower court was correct in holding that a joint venture existed between the parties.

Both the plaintiff and defendant testified that they were to share in the profits (Tr. 16, 67).

The test of right of joint control was met in that the plaintiff was to furnish the financing and book-keeping and the defendant, Mr. Baker, was to manage the cattle. The plaintiff obtained financing through Zion's First National Bank (Tr. 36, 13). The defendant was to manage the animals and was not under the control of the plaintiff as to their management (Tr. 16). The defendant made arrangements when the cattle were to be moved (Tr. 49, 50, 51). Plaintiff asked defendant's opinion about moving the cattle (Tr. 52).

The community of interest requirement as set forth in the case of Conner vs. Great Western Savings & Loan Association, 447 P 2d 609, and quoted by the court in Vern Shutte & Sons vs. Broadbent, 24 Utah

2d 415, at Page 418 states:

“That a community of interest is a joint interest in a common business undertaking, and understanding as to the sharing of profits and losses in a right of joint control.”

The entire reading of the transcript shows there was such a community of interest, that there was a common business undertaking, that there was an understanding as to the sharing of profits and the sharing of losses implied, as stated by the lower court, and there was a right of joint control.

The fourth requirement mentioned in the case cited by the Utah Court is action and conduct showing cooperation. The entire action of the parties as manifested throughout the transcript shows there was cooperation in the purchasing of the cattle, financing of the cattle, the management of the cattle.

CONCLUSION

The trial court appropriately entered a judgment in favor of the plaintiff and against the defendant-appellant.

The respondent respectfully requests this court to either dismiss this appeal or to affirm the judgment rendered by the trial court.

Respectfully submitted,

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